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1 **JOHN AND CINDY FERRARO**  
 2 485 COCO PALMS AVENUE  
 2 LAS VEGAS, NEVADA 89123  
 1 Tele: 702-807-8078

JAN 11 3 32 PM '10

3 U.S. BANKRUPTCY COURT  
 4 MARY A. SCHOTT, CLERK  
 UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA  
 SOUTHERN DIVISION

5 In Re: **JOHN FERRARO**, individually and  
 6 dba JOCINCO;  
 dba ONLY ROSES VEGAS;

Case No. 2:09-bk-23399  
 Chapter 7

7 Debtor,  
 and

DEBTORS' OPPOSITION TO SECURED  
 CREDITORS' MOTION TO LIFT STAY  
 (#36)

8 **CINDY FERRARO**, individually,  
 9 Co-debtor.

DEBTORS' COUNTERMOTION TO  
 COMPEL PARTIES TO SUBMIT TO  
 MEDIATION/MODIFICATION  
 PURSUANT TO AB 149 (Nev. Leg. 2009)

11 Date of Hearing: January 12, 2010  
 Time of Hearing: 01:30 p.m.

12 **JOHN FERRARO**, individually and dba JOCINCO dba ONLY ROSES VEGAS,  
 13 Debtor, and **CINDY FERRARO**, individually, Co-debtor, respectfully submit *Debtors'*  
 14 *Opposition to Secured Creditor's Motion (#36) to Lift Stay*, incorporating herein the *Debtors'*  
 15 previous *Opposition* (#18) and *Supplement* (#30), and making a part hereof by reference, and  
 16 showing: (1) the non-beneficiary (purported) Secured Creditor's motion is inaccurate, there is no  
 17 recorded default or foreclosure; (2) non-beneficiary (purported) Secured Creditor lacks standing  
 18 to bring motion for the same reasons as set forth in *Re: Mitchell*, Case No. 2:07-bk-16226 and  
 19 *Re: Breeden*, Case No. 2:07-bk-17577; and (3) this Court would be required first to enter an  
 20 Order to compel the parties to submit the home to mediation or loan modifications as set forth  
 21 in A.B. 149 (Nev. Leg. 2009).

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 1. This opposition and countermotion is submitted pro se. The non-beneficiary  
 24 (purported) Secured Creditor's last motion (#12) was premature, filed before the meeting of  
 25 creditors, was inaccurate, was denied.

26 2. Non-beneficiary (purported) Secured Creditor's motion is still inaccurate as  
 27 payments have been made to cover each month since the bankruptcy began (see attached bank  
 28 statements).

1	July 1, 2009	Payment \$2,310.12
2	August 20, 2009	Payment \$2,310.12
3	September 15, 2009	Payment \$2,310.12
4	October 26, 2009	Payment \$4,620.24 Double Payment for Oct/Nov
5	December 22, 2009	Payment \$2,320.12

4 **Non-Beneficiary (Purported) Secured Creditor is Without Standing to Bring Motion to Lift**  
 5 **Stay and to Foreclose**

6 3. Debtors purchased the property in 2001 (Clark County Recorder  
 7 200105250001038).

8 4. Debtors refinanced the property in 2005 (Clark County 200507060005280)  
 9 through First Union Mortgage Corporation.

10 5. Sometime prior to the filing of this instant case, the Deed of Trust was assigned,  
 11 without permission of the Debtors, to a third party - MERS for BANK OF NEW YORK  
 12 MELLON.

13 6. There has been no default recorded on the property.

14 7. As decided by this Court in *Re: Mitchell*, Case No. 2:07-bk-16226 and *Re:*  
 15 *Breeden*, Case No. 2:07-bk-17577, a non-beneficiary (purported) Secured Creditor cannot seek  
 16 relief from the automatic stay of against these Debtors, who do not owe the non-beneficiary, and  
 17 against whom there are no foreclosure proceedings.

18 8. Additional to the claim of lack of standing as real party-in-interest, MERS for the  
 19 Bank of New York Mellon, is neither licensed nor exempt from licensing through the Mortgage  
 20 Lending Division of the State of Nevada, and cannot act in any capacity as purported Secured  
 21 Creditor or as assignee/trustee.

22 9. This injection of a non-beneficiary (purported) Secured Creditor into the  
 23 bankruptcy process represents a recent invention by the mortgage industry unrecognized by  
 24 traditional mortgage law that, as the purported Secured Creditor's own documents proves, has  
 25 no true or direct or indirect role in the original lending process.

26 10. Instead, the purported Secured Creditor uses legal slight of hand to manufacture  
 27 an interest in the Debtors' loan which does not cure the purported Secured Creditor's lack of  
 28 standing or lack of real-party in interest status.

11. Indeed, it is critically important to bankrupt homeowners, and the Debtors

1 themselves, to know who owns their loan in order to negotiate modifications and to defend  
2 themselves against any abuses that have occurred since the loan was originated.

3 12. Nevada Mortgage Law, like mortgage law across the country, has developed well  
4 settled predictability through the last one hundred years of common law jurisprudence and  
5 statutory enactments.

6 13. The roles and rights of various players in a lending transactions - such as  
7 borrower, lender, and beneficiary of the deed of trust, have all been well settled, and one of the  
8 most important of these settled principles is that the beneficiary of the deed of trust is the party  
9 to whom the debt is owed. *Hellman v. Capurro*, 549 P.2d 750, 751 (Nev. 1976) ("A mortgagee  
10 or a beneficiary to a deed of trust is entitled to only one satisfaction of his debt.") (emphasis  
11 added); see also *Monterey S.P. 'Ship v. W.L. Bangham, Inc.*, 777 P.2d. 623, 627 (Cal. 1989) ("[A]  
12 deed of trust typically secures a debt owed to the beneficiary . . .").

13 14. The non-beneficiary (purported) Secured Creditor in this instance attempts to  
14 disrupt this well settled system by claiming it is a "beneficiary" of the deed of trust while holding  
15 no real "beneficial ownership interests" in the loan.

16 15. Moreover, even if the purported Creditor was the proper party to bring the motion  
17 to lift stay, it could not deprive the Debtors of bankruptcy's fundamental protection - the  
18 automatic stay - based on the documentation submitted,

19 16. Accordingly, this Court has denied similar motions now on appeal by the same  
20 non-beneficiary (purported) Secured Creditors in the United States Court of Appeals for the Ninth  
21 Circuit), and the Court should likewise deny this motion.

22 **State Foreclosure Mediation Process**

23 17. There is no default recorded against the Debtors.

24 18. Default and foreclosure of property is a matter of state law, and this Court is  
25 required under the Erie doctrine to apply the principles of state law of the state in which it sits.  
26 *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1391 (9<sup>th</sup> Cir. 1994).

27 19. A.B. 149 (Nev. Leg. 2009) was passed, amending NRS Chapter 107, and became  
28 effective on July 1, 2009.

1           20. The law requires that no default or foreclosure can occur, nor sale to third party,  
 2 unless the matter has been subjected to certain stringent requirements, including proper notice  
 3 of default, notice of sale, mediation and/or modification.

4           21. If this Court is inclined to grant the motion to lift stay, then, NRS Chapter 107, as  
 5 amended by then A.B. 149, becomes applicable as a matter of state law, as the parties are exempt  
 6 from A.B. 149 only during a bankruptcy that has not been dismissed or where the stay has not  
 7 been lifted.

8 **Conclusion**

9           Accordingly, this Court should deny the non-beneficiary (purported) Secured Creditor's  
 10 motion (#36) to lift stay as inaccurate, lacking standing, or in the alternative, compel compliance  
 11 with NRS Chapter 107 as amended by A.B. 149.

12           DATED this 11<sup>th</sup> Day of January, 2010.

13           **DEBTOR**

14           */s/ John Ferraro*  
 15 **JOHN FERRARO**, individually and  
 16 dba JOCINCO;  
 17 dba ONLY ROSES VEGAS

18           **CO-DEBTOR**

19           */s/ Cindy Ferraro*  
 20 **CINDY FERRARO**, individually

21           **CERTIFICATE OF SERVICE**

22           Pursuant to FRCP 5, I hereby certify that on the date entered below, I served a true  
 23 and correct copy of the foregoing document by mail on all parties in said action, by placing a true  
 24 copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as  
 25 set forth below.

26           **MAILING MATRIX**

27           DATED this 11<sup>th</sup> Day of January, 2010.

28           **DEBTOR**

29           */s/ John Ferraro*  
 30 **JOHN FERRARO**, individually and  
 31 dba JOCINCO;  
 32 dba ONLY ROSES VEGAS

33           **CO-DEBTOR**

34           */s/ Cindy Ferraro*  
 35 **CINDY FERRARO**, individually

## Wells Fargo Account Activity

## Wells Fargo Business Online®

## Account Activity

ONLY ROBERT VEGAS LLC Accounts

BUSINESS CHECKING XXXXX3646

## Activity Summary

Ending Balance as of 12/26/09	\$106.56
Ending Collected Balance as of 12/26/09	\$106.56
Available Balance	\$164.36

## Transactions

## Find Transactions

Description or Keyword   
Dated 

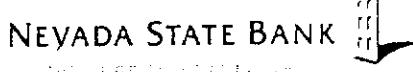
Amounts or Check Numbers

Type

Date	Description	Deposits / Credits	Withdrawals / Debits
<b>Pending Transactions</b>			
No pending transactions meet your filtering above.			
<b>Posted Transactions</b>			
12/22/09	BILL PAY LITTON LOAN SERV ON-LINE KNOX00794 ON 12-22		\$2,294.74
12/28/09	BILL PAY LITTON LOAN SERV ON-LINE KNOX00794 ON 12-28		\$4,620.24
01/06/09	BILL PAY LITTON LOAN SERV ON-LINE KNOX00794 ON 08-15		\$2,310.12
<b>Total</b>		<b>\$0.00</b>	<b>\$8,225.10</b>

Equal Housing Lender

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Statement Period: 08/01/09 - 08/27/09 Statement Date: 08/27/09 Transaction Date: 08/27/09

Current Statement Transactions on OPERATING-C/O KRISTY FERRARO \*\*\*\*\*3225 - \$2,255.15 as of August 27, 2009

Date	Check Number	Description	Debit	Credit	Balance
08/13/2009	<u>535</u>	CHECK	200.00		2,206.97
08/14/2009		BANKCARD-8740 BTOT DEP 518564770113041		247.62	2,454.59
08/14/2009		POS PURCHASE 08/12 11:13 DUNKIN #345930 Q35 LAS VEGAS NV 058737 DUNKIN #345 5814	7.21		2,447.38
08/14/2009		PINNED PURCHASE 08/13 17:09 425 E WINDMILL LN LAS VEGAS NV 535260 7-ELEVEN 5541	10.00		2,437.38
08/14/2009		POS PURCHASE 08/12 16:21 SMOKE SHOP LAS VEGAS NV 030025 SMOKE SHOP 5993 8650	12.00		2,425.38
08/14/2009		POS PURCHASE 08/12 19:30 PEI WEI #0097 Q02 HENDERSON NV 001037 PEI WEI #00 5812	14.05		2,411.33
08/14/2009		POS PURCHASE 08/12 15:07 EL POLLO LOCO #6024 LAS VEGAS NV 001055 EL POLLO LO 581	14.54		2,396.79
08/14/2009		PINNED PURCHASE 08/13 16:32 425 E WINDMILL LN LAS VEGAS NV 529390 7-ELEVEN 5541	20.00		2,376.79
08/14/2009		PINNED PURCHASE 08/14 14:39 475 E WINDMILL LANE LAS VEGAS NV 000395 VONS St 5411	62.94		2,313.85
08/14/2009		PINNED PURCHASE 08/14 13:41 SKECHERS 079 LAS VEGAS NV 001342 MPS MERCHAN 5661 86	64.77		2,249.08
08/14/2009	<u>542</u>	CHECK	114.00		2,135.08
08/14/2009	<u>539</u>	CHECK	122.10		2,012.98
08/14/2009	<u>533</u>	CHECK	569.20		1,443.78
08/17/2009		BANKCARD-8740 BTOT DEP 518564770113041		188.46	1,632.24
08/17/2009		BANKCARD-8740 BTOT DEP 518564770113041		332.42	1,964.66
08/17/2009		PINNED PURCHASE 08/15 10:23 2310 E. SERENE AVENUE LAS VEGAS NV 726225 WAL-MART #2	11.67		1,962.99
08/17/2009		POS PURCHASE 08/14 15:03 SMOKE SHOP LAS VEGAS NV 060014 SMOKE SHOP 5993 8650	12.00		1,940.99
08/17/2009		POS PURCHASE 08/13 19:22 SALLY BEAUTY #3714 LAS VEGAS NV 077976 SALLY BEAUT 5977	14.36		1,926.63
08/17/2009		PINNED PURCHASE 08/17 12:16 425 E WINDMILL LN LAS VEGAS NV 130643 7-ELEVEN 5541	20.00		1,906.63
08/18/2009		POS PURCHASE 08/17 12:34 SMOKE SHOP LAS VEGAS NV 010005 SMOKE SHOP 5993 8650	12.00		1,894.63
08/18/2009		PINNED PURCHASE 08/17 18:33 475 E WINDMILL LANE LAS VEGAS NV 006668 VONS St 5411	20.34		1,874.29
08/18/2009		PINNED PURCHASE 08/18 14:38 2310 E. SERENE AVENUE LAS VEGAS NV 903339 WAL-MART #2	24.00		1,850.29
08/18/2009		YELLOW BOOK PACI INTERNET 043000099409195	262.00		1,588.29
08/18/2009	<u>544</u>	CHECK	156.75		1,431.54
08/19/2009		DEPOSIT		3,925.00	5,356.54
08/19/2009		BANKCARD-8740 BTOT DEP 518564770113041		177.63	5,534.17
08/19/2009		POS PURCHASE Siena Deli 08/13	13.50		5,520.67
08/19/2009		POS PURCHASE 08/18 14:45 WENDYS-WOLV #0123 Q25 LAS VEGAS NV 003974 WENDYS-WOLV 5	13.12		5,507.55
08/19/2009	<u>547</u>	CHECK	156.00		5,351.55
08/19/2009	<u>546</u>	CHECK	36.60		5,315.05
08/19/2009	<u>545</u>	CHECK	100.00		5,215.05
08/20/2009		BANKCARD-8740 BTOT DEP 518564770113041		122.26	5,337.31
08/20/2009		PINNED PURCHASE 08/20 12:20 475 E WINDMILL LANE LAS VEGAS NV 005803 VONS St 5411	9.96		5,327.35
08/20/2009		<del>CB Internet Banking Transfer From 1001003217 On 8/21/09 At 13:16</del>			3,017.23
08/21/2009		BANKCARD-8740 BTOT DEP 518564770113041		282.03	3,299.26
08/21/2009		CB Internet Banking Transfer From 1001003217 On 8/21/09 At 13:16		478.00	3,777.26
08/21/2009		PINNED PURCHASE 08/20 17:30 9300 S EASTERN AVE LAS VEGAS NV 655586 7-ELEVEN 5541	15.00		3,762.26
08/21/2009		PINNED PURCHASE 08/20 17:46 CHET COX 10611 S EAST HENDERSON NV 208250 CHET COX 5	20.00		3,742.26
08/21/2009		SPRINT CBBill Pay TRAN#189	191.85		3,550.41
08/21/2009	<u>549</u>	CHECK	78.50		3,471.91
08/21/2009	<u>548</u>	CHECK	221.00		3,250.91
08/24/2009		AMERICAN EXPRESS SETTLEMENT 5270742463		53.82	3,304.73

Case 09-23399-bam Doc 30 Entered 09/09/09 13:37:15 Page 4 of 4

Case 09-23399-bam Doc 18 Entered 08/13/09 06:19:21 Page 3 of 14

017 00010 01 PAGE: 1  
 ACCOUNT: 1001003225 07/31/2009  
 DOCUMENTS: 29

2

ONLY ROSES VEGAS LLC  
 OPERATING-C/O KRISTY FERRARO  
 580 E WINDMILL LANE SUITE 125  
 LAS VEGAS NV 89123

30  
0  
29

CENTENNIAL BRANCH  
 5785 CENTENNIAL CENTER BLVD  
 LAS VEGAS NV 89149

## CB SMALL BUSINESS CK ACCOUNT 1001003225

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT .....			06/30/09	521.99
DEPOSIT	3,650.75		07/01/09	4,172.74
POS PURCHASE 06/29 11:37 MCDONALD'S F14641 LAS VEGAS NV 085178 MCDONALD'S 4.19			07/01/09	4,168.55
POS PURCHASE 06/29 21:31 TERRACE POINT CAFE/BAR LAS VEGAS NV 001117 TERRA 10.00			07/01/09	4,158.55
POS PURCHASE 06/30 14:41 SMOKE SHOP LAS VEGAS NV 040009 SMOKE SHOP 599 12.00			07/01/09	4,146.55
POS PURCHASE 06/29 14:56 CAPRIOTTI S LAS VEGAS NV 000038 CAPRIOTTI S 58 12.93			07/01/09	4,133.62
POS PURCHASE 06/30 14:01 CAFE RIO EASTERN LAS VEGAS NV 070027 CAFE RIO EA 58 16.21			07/01/09	4,117.41
PINNED PURCHASE 07/01 10:34 425 E WINDMILL LN LAS VEGAS NV 441924 7-ELE 20.00			07/01/09	4,097.41
AMERICAN EXPRESS COLLECTION 5270742463 4.95			07/01/09	4,092.46
VOLKSWAGON CRED CBBILL Pay TRAN#173 400.00			07/01/09	3,692.46
LITTON LOAN SERV CBBILL Pay TRAN#172 2,310.12			07/01/09	1,382.34
CHECK # 492 54.25			07/01/09	1,328.09
AMERICAN EXPRESS SETTLEMENT 5270742463 102.31			07/02/09	1,430.40
BANKCARD-8740 BTOT DEP 518564770113041 166.85			07/02/09	1,597.25
POS PURCHASE 07/01 15:07 SMOKE SHOP LAS VEGAS NV 050020 SMOKE SHOP 599 6.02			07/02/09	1,591.23
POS PURCHASE 06/30 11:14 DUNKIN #345930 Q35 LAS VEGAS NV 053598 DUNKIN #345 6.38			07/02/09	1,584.85
PINNED PURCHASE 07/01 15:06 2310 E. SERENE AVENUE LAS VEGAS NV 219812 WAL-M 47.82			07/02/09	1,537.03

\* \* \* C O N T I N U E D \* \* \*